



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105**

IN THE MATTER OF: Derive Systems, Inc.

<p>Richard Welsh Chief Operating Officer Derive Systems Inc., Derive Power, LLC, and Derive Efficiency, LLC 4150 Church St., Suite 1024 Sanford, FL 32771</p>	<p><u>Sent via email:</u> Richard Welch Chief Operating Officer Derive Systems, Inc. richard.welch@derivesystems.com</p> <p><u>cc to:</u> Chris Maglio, Derive Systems chris.maglio@derivesystems.com</p> <p>Susan Harris Sidley Austin LLP One South Dearborn Chicago, IL 60603 svharris@sidley.com</p> <p>Justin Savage, Esq. Sidley Austin LLP 1501 K St. NW Washington, DC 20005 jsavage@sidley.com</p>
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Request for Information Under §§ 208 and 114 of the Clean Air Act, 42 U.S.C. § 7542(a)

Dear Richard Welsh:

The United States Environmental Protection Agency (“EPA”) hereby requests that Derive Systems Inc., Derive Power, LLC and Derive Efficiency, LLC, and any of its parent organizations, affiliates, predecessors, successors, and assignees (“Derive” or “you”), submit certain information as part of an EPA investigation to determine Derive’s compliance with Sections 203(a) and 213(d) of the Clean Air Act (“CAA”), 42 U.S.C. §§ 7522(a) and 7547(d), and the applicable regulations, including compliance with the terms of the consent decree in *United States v. Derive Systems, Inc. et al.*, Case 1:18-cv-02201 (D.D.C.), D.J. Ref. No. 90-5-2-1-11627 (the “CD”).¹

¹ CD Paragraph 80 states that the CD in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States in accordance with applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

Appendix A provides definitions. Appendix B provides instructions for your responses to this Request for Information. Appendix C contains information about confidential business information. Appendix D delineates the information Derive is to provide.

The EPA issues this Request for Information (“Information Request”) under Sections 114(a) and 208(a) of the CAA, 42 U.S.C. §§ 7414(a) and 7542(a). Under Section 114(a), the Administrator of the EPA may require any person to establish and maintain such records, make such reports, and provide such other information as the Administrator may reasonably require when the Administrator believes the person may have information necessary for the purposes of carrying out any provision of the CAA, except the provisions of the CAA with respect to a manufacturer of new motor vehicles or new motor vehicle engines. Under Section 208(a), the Administrator of the EPA may require any person who is subject to the CAA to provide information necessary to determine whether the person has acted in compliance with these requirements and the regulations promulgated thereunder. The Administrator has delegated this authority to the undersigned Manager of Region 9’s Air Enforcement Office, Enforcement and Compliance Assurance Division. In addition, the CD contains provisions that delineate your information retention and reporting requirements, including Paragraphs 26, 76 and 77.²

You must submit responses to this Information Request to the EPA representative listed below within thirty (30) calendar days from the date you receive this Information Request. Please carefully review the instructions, definitions, and specific requests as you prepare your response. If you anticipate being unable to fully respond to the Information Request by this date, you must contact Janice Chan, at chan.janice@epa.gov or have your attorney contact Margaret Alkon at alkon.margaret@epa.gov to request an extension within fifteen (15) calendar days from the date you receive this Information Request. Any such request should be made in writing as soon as possible after receipt of this Information Request and must explain why an extension is necessary and include a proposed timeline for providing the requested information. If timely submitted, the EPA will review your request and may extend the time in which your response must be provided.

² CD Paragraph 77 requires Derive and its contractors and agents to retain all documents, records or other information that are in or that come into your possession and related in any manner to your performance of obligations under the CD, and to provide copies of such documents, records or other information upon request by the United States. CD Paragraph 26 requires Derive to document and explain all Calibration parameters modified, relative to the OEM stock Calibrations, for all of its Pre-Loaded Tunes for each 2014 Model Year (MY) and later vehicle/engine model that are still supported by Defendants to their customers. This information can be submitted with the same level and format of detail required by the CARB forms and for multiple vehicles “such that the information provides sufficient detail for EPA to understand all modifications from each OEM stock Calibration caused by Defendants’ Pre-Loaded Tune.” Paragraph 26.a. states that EPA may request particular Calibration files and software tools, and Paragraph 26.b. states that “EPA may request further analysis or explanation of the changes made by Pre-Loaded Tunes, such as changes that may affect a specific Calibration parameter.” CD Paragraph 76 gives the United States a right of entry to monitor progress, verify data, inspect records and all products regulated under Title II of the Act, obtain documentary evidence and assess Defendants’ compliance with this Consent Decree.

The EPA acknowledges that the COVID-19 pandemic may be impacting your business. If that is the case, we will consider your specific circumstances in determining an appropriate timeline for responding to this Information Request, while still ensuring that the Agency receives the information it needs to timely assess and confirm your company's compliance with the CAA.

Failure to provide the requested information may result in the initiation of a civil action pursuant to Section 205(b) of the CAA, 42 U.S.C. § 7524(b). Failure to provide all requested information in its entirety, and in the format requested, may result in additional inquiries and penalties. These inquiries may include additional written requests, inspections, or depositions as authorized by Sections 208 and 307 of the CAA, 42 U.S.C. §§ 7542(a)–(b), 7607(a), and the information retention and reporting requirements of the CD, including Paragraphs 26, 76 and 77. It is important that your responses be clear, accurate, organized, and complete. The EPA will regard any submitted information that is misleading, false, incomplete, or submitted without regard to its accuracy as a violation of the CAA and/or criminal statutes. We may use any information submitted in response to this Information Request in an administrative, civil, or criminal action.

You must submit all requested information under an authorized signature with the following certification:

I certify that I am fully authorized by [corporate affiliation] to provide the above information on its behalf to EPA. I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 113(c)(2) of the Clean Air Act, 42 U.S.C. § 7413(c)(2), and 18 U.S.C. §§ 1001 and 1341.³

You may be entitled to assert a business confidentiality claim covering all or part of the information provided in response to this Information Request as specified in the Confidentiality of Business Information (“CBI”) regulations, 40 C.F.R. Part 2, Subpart B. However, no CBI claim may be made with respect to emissions data as defined at 40 C.F.R. § 2.301(a)(2). You must specify the page, paragraph, and sentence when identifying the information subject to your CBI claim. Appendix C of this Information Request specifies the assertion and substantiation requirements for business confidentiality claims. EPA may, without further notice, provide the public with any information not subject to a CBI claim.

Please submit the requested information electronically. You may do so via the EPA CDX system or via email to Janice Chan, Region 9 Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, at chan.janice@epa.gov. Please note that the EPA email server will allow attachments up to 20 MB. Alternatively, you may want to provide documents in response to this Information Request by way of a secure file sharing site. Upon request, EPA can

³ The certification language required by Paragraph 46 of the CD is also acceptable.

provide a secure link to a file transfer program site in order to submit responses to this Information Request. Please let us know how you want to proceed.

If you have any questions concerning this Information Request, have your attorney contact Margaret Alkon in the Office of Regional Counsel at Alkon.Margaret@epa.gov.

Sincerely,

Roshni Brahmbhatt, Manager
Air Enforcement Office
Enforcement and Compliance
Assurance Division
EPA Region 9 – San Francisco

cc: Natalie Harrison, U.S. Department of Justice
Enclosures

Appendix A

Definitions

All terms used in this Information Request will have their ordinary meaning unless such terms are defined below or in the consent decree in *United States v. Derive Systems, Inc. et al.*, Case 1:18-cv-02201 (D.D.C.), D.J. Ref. No. 90-5-2-1-11627 (the “Consent Decree”), or in the CAA, 42 U.S.C. §§ 7401 et seq., or the Motor Vehicle Regulations found at 40 C.F.R. Parts 85, 86, and 1068, in which case they shall have their meanings as defined therein.

1. The term “information” includes any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intraoffice communications, electronic mail (“email”), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting, or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, presentations, spreadsheets, and worksheets. The term “information” includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term “information” also includes any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voicemails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back-up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives and “cloud” or other storage), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. Information bearing any notation not part of the original text is considered to be separate information. A draft or non-identical copy is separate information within the meaning of this term.
2. The term “entity” means any natural person, corporation, partnership, limited liability company, sole proprietorship, joint venture, or any formal or informal group, organization or association. The term “person” includes an individual, corporation, partnership, or association. *See* Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
3. The term “you,” “your,” and “Derive” means all Derive entities listed in the Consent Decree, and any affiliates, predecessors, successors, and assignees. The term “affiliated organization” means any organization or entity associated with another entity as an agent, parent organization, predecessor corporation, subsidiary organization, or any organization, or entity acting in lieu of another entity.

4. The term “interim results” with respect to independent emissions testing of Derive products pursuant to the CD includes any On-Board Diagnostics (OBD) scans, mileage accumulation, Derive product installations, horsepower tests, or emissions tests that occur after installation and/or operation of any Derive product.
5. The terms “user” and “customer” mean the persons who ultimately use or are intended to ultimately use a product.

Appendix B

Instructions for Responses

1. Provide a complete, detailed response, in English, to each Request in Appendix C below.
2. Please provide your response to this Information Request in electronic form. All responsive documents and materials (e.g., copies of print media, audio, and visual material) must be provided as an accurate and legible copy in searchable unlocked format, number stamped in sequential order (e.g., BATES stamped). Where spreadsheets are responsive to a Request, produce them in unlocked electronic .xlsx spreadsheet format (locked files are unacceptable).
3. Where a Request allows or requires documents to be provided in response, provide all documents electronically in a folder specific to that question or subpart and labeled accordingly. Provide copies of documents, not original documents.
4. When a response is provided in the form of a number, specify the units of measure.
5. Where documents or information necessary for a response is not in your possession, custody, or control, indicate in your response why such documents or information are not available or in your possession, custody, or control, and identify any source that either possesses or is likely to possess such information.
6. Where you have previously submitted information to the EPA that is responsive to any of the Requests set forth in Appendix C, re-submit that information in accordance with these instructions (Appendix B). Identify the material that was previously provided, the date on which it was provided, how the information was provided (e.g., electronically, fax, mail), and the individual at the EPA to whom it was provided.
7. If you assert any objections in responding to this Information Request, each objection must state with specificity the grounds for objecting to the request, including the reasons, and must state whether any responsive materials are being withheld on the basis of that objection.
8. This Information Request is a continuing request. You must promptly supplement your response to any Request in Appendix C in the event you learn that you possess responsive information not yet produced or if you gain possession, custody, or control of responsive information after responding to this Information Request.

Appendix C

Confidential Business Information

An entity may assert a business confidentiality claim covering all or part of the information provided in response to this Information Request for any business information entitled to confidential treatment under Section 208(c) of the CAA, 42 U.S.C. § 7542, and 40 C.F.R. Part 2, subpart B. Under Section 208(c) of the CAA, entities are entitled to confidential treatment of information that would divulge methods or processes entitled to protection as trade secrets. Under 40 C.F.R. Part 2, subpart B, business confidentiality means “the concept of trade secrecy and other related legal concepts which give (or may give) a business the right to preserve the confidentiality of business information and to limit its use or disclosure by others in order that the business may obtain or retain business advantages it derives from its rights in the information.” 40 C.F.R. § 2.201(e).

Information covered by a claim of business confidentiality will be disclosed by the EPA only to the extent, and by means of the procedures, set forth in Section 208(c) of the CAA and 40 C.F.R. Part 2, subpart B. If no such business confidentiality claim accompanies the response to this Information Request when it is received by EPA, then such information may be made available to the public without further notice. See 40 C.F.R. § 2.204(a)(3).

Pursuant to 40 C.F.R. § 2.301(h), the EPA possesses the authority to disclose to any authorized representative of the United States information which might otherwise be entitled to confidential treatment. To assist in its review and analysis, the EPA may disclose information provided in response to this and other information requests to an EPA contractor, the Eastern Research Group, under contract number 68HERH19C0004. See 84 Fed. Reg. 8859, 59-60 (Mar. 12, 2019).

To assert a business confidentiality claim, an entity must place on (or attach to) all information subject to the claim either a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as “trade secret,” “proprietary,” or “company confidential” at the time it provides its response to this Information Request. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified, and may be provided separately to facilitate identification and handling by the EPA. An entity should indicate whether confidential treatment is only required until a certain date or until the occurrence of a certain event.

The criteria the EPA will use in determining whether material claimed as business confidential is entitled to confidential treatment are set forth at 40 C.F.R. §§ 2.208(a)-(d) and 2.301. Emission data, as defined at 40 C.F.R. § 2.301(a)(2), is expressly not entitled to confidential treatment under 40 C.F.R. Part 2, subpart B. See 42 U.S.C. § 7542(c); 40 C.F.R. § 2.301(e).

Appendix D

Information Request⁴

Derive must submit the following information to the United States Environmental Protection Agency pursuant to Sections 114(a) and 208(a) of the CAA, 42 U.S.C. §§ 7414(a) and 7542(a):

1. Derive was required to test the 40420 Bully Dog Handheld Device by January 21, 2020. CD Paragraphs 27(c)(6) and (e). Derive chose to test a New Pre-Loaded Tune instead of the Existing Pre-Loaded Tune installed on the Bully Dog 40420 Tuner. After the Bully Dog 40420 test vehicle was run through baseline testing, Derive released a calibration on January 20, 2020 (the “January 20, 2020 Tune”, version 1.3.0.0 1.0.8.2).⁵ With this January 20, 2020 Tune installed in the test vehicle, the Fuel System emissions monitor would not complete. In other words, the January 20, 2020 Tune failed the check of OBD functionality. On May 5, 2020, Derive released an updated version with a new base Ford calibration for the 2011-2012 6.7 liter Powerstroke (the “May 5, 2020 Tune”, version 1.3.0.0 1.0.8.3), and it was this May 5, 2020 Tune that SEMA⁶ reported as passing the check of OBD functionality.
 - a. Explain why Derive chose to test a New Pre-Loaded Tune instead of the Existing Pre-Loaded Tune.⁷
 - b. Provide a list of all Derive sales of the Bully Dog 40420 Tuner with the Existing Pre-Loaded Tune on and after January 21, 2020.
 - c. Provide a list of all Derive sales of the Bully Dog 40420 Tuner with the January 20, 2020 Tune.
 - d. Provide a list of each Derive product using the January 20, 2020 Tune and, for each product, the dates of use.

⁴ This information request references and discusses information which Derive has claimed as confidential business information, including the Derive Response to EPA Technical Testing Memorandum dated October 14, 2020 (the October 14, 2020 Response).

⁵ Derive October 14, 2020 Response at page 25.

⁶ The Specialty Equipment Market Association (SEMA) Garage in Diamond Bar, California is the entity selected by Derive to conduct independent emissions testing under the CD.

⁷ The Existing Pre-Loaded Tune is presumed to be materially the same as the calibration at the date of entry of the CD (April 16, 2019); the date of lodging of the CD (Sept. 24, 2018); and the subject of the EPA Bully Dog Test conducted on a Tuner manufactured in 2015 and referenced on pp. 1–2 of the CD as the EPA Bully Dog Test. EPA had shared the results of the EPA Bully Dog Test with Derive in September 2016. In its October 14, 2020 Response, Derive stated that between July 10, 2017 and January 20, 2020, Derive made no changes to this calibration related to the 2011-2016 6.7L Powerstroke. Derive also reported that it had no records of versions or changes to this calibration prior to July 10, 2017. Given that EPA shared the results from the EPA Bully Dog Test in 2016, Derive had an opportunity to investigate its actions and document whether any material changes were made to the calibration that was the subject of the EPA Bully Dog Test. The language of Paragraph 27(c)(6) of the CD illustrates that the intent was to have Derive duplicate the EPA Bully Dog Test.

- e. Describe all actions Derive has taken, if any, to remove from the stream of commerce the Existing Pre-Loaded Tune installed on the Bully Dog 40420 Tuner. Include the dates such actions were taken. Include copies of any outreach made to dealers or customers.
 - f. Describe all actions Derive has taken, if any, to remove from the stream of commerce the January 20, 2020 Tune. Include the dates such actions were taken. Include copies of any outreach made to dealers or customers.
 - g. In the file “Complete OBD Sequence for Derive Tune on 2011 Ford F-250 6.7L”, the notes column states “Got code P20EE between these dates” (referring to 1/26/2020 and 1/27/2020) yet none of the OBD scan files show this Diagnostic Trouble Code (DTC) and the summary table lists “none” for OBD codes. Explain why the OBD scan files do not show the DTC.
2. Provision II(5)(b) of Appendix C of the CD requires that the testing facility is to report all results simultaneously to EPA and Derive. Derive and SEMA failed to comply with the CD in the testing of the Bully Dog Tuner. For example, SEMA informed Derive, but not EPA, that the Bully Dog Tuner triggered a DTC.
 - a. SEMA provided the revised test report to Derive and then Derive submitted it to EPA as part of the Derive October 14, 2020 Response. SEMA must submit the revised report for the test of the Bully Dog Tuner directly to EPA.
 - b. Going forward, the testing facility must submit all results and revised reports simultaneously to EPA and Derive. Interim results indicating any issue with OBD functionality reported to Derive must also be simultaneously reported to EPA and described in the final test summary report. This includes the revised test report requested in request 2a above for the Bully Dog 40420.
 - c. The “OBD summary” and “Procedure Section” sections of the test summary report must identify the complete OBD sequence including any changes to the vehicle and any product changes such as switching to a new software version, and identify any OBD readiness monitors (PID-\$01) that fail to complete or DTCs triggered and the date and vehicle odometer reading at which this happens.
 - d. A reportable result occurs whenever an OBD readiness monitor (PID-\$01) fails to complete or a DTC is triggered after installation and/or operation of any Derive product. It also includes any situation where the test vehicle has a mechanical malfunction requiring repair during or after baseline testing regardless of whether the Derive product was installed yet.
 3. On pages 13-14 of the Derive October 14, 2020 Response, Derive provides an explanation regarding the testing of the Bully Dog 40420 Tuner in quotes, indicating that this is a statement from SEMA but the origin is unclear.
 - a. Identify the person making this statement and the date it was made.
 - b. Identify the hardware changed in the statement “It was ultimately determined that the calibration we had been provided was based on an OEM Ford calibration that was incompatible with this specific vehicle. Derive believes this OEM Ford calibration was incompatible because of a hardware change with subsequent software update from Ford”.
 - c. Is this statement part of SEMA’s revised test report?
 - d. Provide the full statement.

4. For the Group 2 (2019 Turbocharged 3.5-Liter F150) vehicle test, the Derive Pre-Loaded Tune disables Diagnostic Trouble Code P0068. Derive did not disclose the fact that this calibration disables this DTC to EPA until the Derive October 14, 2020 Response. Derive confirmed in its November 6, 2020 response to EPA's October 30th request for clarification that Derive "inhibited" this DTC "because Derive's calibration causes the intake air pressure to exceed the limit programmed into the OEM diagnostic under high-load/high-boost scenarios" and that Derive is "unable to expand these programmed limits" This action prevents the P0068 DTC and related MIL from being triggered, whether false or true. No reasonable basis exists for a product that fails to retain the Full Operation and Functionality of the OBD. The OBD Function procedure set out in Appendix C of the CD works to confirm the functionality of the OBD when no changes have been made that would defeat this check.
- Identify whether the tested Pre-Loaded Tune is an Existing or New Pre-Loaded Tune. State the date this calibration was first introduced into commerce, and the date of any updates and identify the version that was tested.
 - Provide a list of each Derive product using the tested Pre-Loaded Tune and, for each product, the dates of use.
 - Identify each Derive Pre-Loaded Tune that disables the DTC P0068 and provide a list of each Derive product using that Tune. For each Derive product that includes a Pre-Loaded Tune that disables DTC P0068, identify:
 - the date that Tune was introduced into commerce;
 - and the date, if any, the Tune was removed from commerce or updated to prevent the disabling of DTC P0068 (specify which action occurred).
 - Derive provided in the "ECU Information Modification Forms" submitted to EPA on 24 October 2018 information for a 2018 turbocharged 3.5-liter F150 for Group 2 vehicles and did not list the P0068 DTC in the list of parameters that are modified. Provide the MTF tune files for the 2018 turbocharged 3.5-liter F150 for i - v. If Derive has revised these tunes since 24 October 2018, provide the 24 October 2018 version and each newer version. Each tune file should represent the exact tune file installed when a user selects these options without any redactions or changes made by Derive.
 - 93 octane, no options selected (what was tested by SEMA)
 - 93 octane, modified airbox, stock FMIC, active grill shutters enabled
 - 93 octane, stock airbox, modified FMIC, active grill shutters enabled
 - 93 octane, stock airbox, stock FMIC, active grill shutters disabled
 - 93 octane, modified airbox, modified FMIC, active grill shutters disabled.
5. For the Group 1 (2017 Turbocharged 2.3-Liter Mustang) vehicle test:
- Provide the MTF tune files for the 2018 turbocharged 2.3-liter Mustang for i - v. If Derive has revised these tunes since 24 October 2018, provide the 24 October 2018 version and each newer version. Each tune file should represent the exact tune file installed when a user selects these options without any redactions or changes made by Derive.
 - 93 octane, no options selected (what was tested by SEMA)
 - 93 octane, modified airbox, stock FMIC, active grill shutters enabled
 - 93 octane, stock airbox, modified FMIC, active grill shutters enabled

- iv. 93 octane, stock airbox, stock FMIC, active grill shutters disabled
 - v. 93 octane, modified airbox, modified FMIC, active grill shutters disabled.
 - b. Identify if the tested Pre-Loaded Tune is an Existing or New Pre-Loaded Tune. A “New Pre-Loaded Tune” means a Pre-Loaded Tune introduced into commerce on or after April 16, 2019, the Date of Entry. CD Paragraph 10.
6. Does Derive add any “user defined parameters” to Derive Pre-Loaded Tunes? If yes:
- a. Identify the vehicles and parameter names and describe the parameter changes.
 - b. Describe how the user defined parameters would be viewed by EPA using the Advantage software. Would they appear within the existing parameter groups on the left side of the screen, or must they be viewed some other way?
7. The CD requires retaining OBD monitoring capability necessary to identify potential emission problems associated with vehicle operation and aftermarket part or Calibration installations. Derive has indicated to EPA that Derive products disable DTCs (specifically the P0068 DTC), modify thresholds, and have other ways to change OBD monitoring (e.g., increasing or decreasing threshold parameters related to OBD, developing the capability to match the OEM’s calibration validation checksums) that call into question whether Derive calibrations retain the Full Operation and Functionality of the OBD. Derive must:
- a. Document and disclose to EPA all OBD DTC changes or disablements in current and future calibrations. Provide this response in table format that includes the following headers in addition to any other columns that may be necessary:
 - i. Derive Product(s)
 - ii. Vehicle Group
 - iii. Tune options (e.g., all tunes, 93 octane, only tunes with specific hardware options selected during installation, etc.)
 - iv. List of DTC disabled by Derive
 - v. List of OBD threshold parameters modified by Derive

For the purpose of this request, OBD threshold parameters are parameters used by the OEM OBD system to determine when and how an OBD monitor, DTC, or any other OBD function runs. Examples include, but are not limited to, changes to boost limits, torque limits, temperature thresholds to begin or end fuel control for catalyst protection, all combustion stability limits, smoke limits, airflow limits, catalyst efficiency thresholds, catalyst monitor index ratios thresholds, oxygen sensor response time threshold, time at over boost limits, and calibration validation checksums, lambda limits.

- b. Submit all test procedures Derive used to ensure Full Operation and Functionality of the OBD system. For each Derive calibration change identified in Information Request 7.a.v, identify whether or not Derive conducted OBD functionality evaluations. If yes, then identify which vehicle(s) Derive used in its evaluation, which test procedure(s) were used, and how that test procedure confirms the vehicle’s OBD system continues to detect and report malfunctions equivalent to the OBD system installed by the original equipment manufacturer (OEM) when the vehicle was certified by EPA.

- c. Submit Derive's complete EO applications for the four Enthusiast (SCT/BullyDog) EO applications submitted to CARB that cover all of the device testing for EPA that has taken place with SEMA Garage to date. If it is not explicitly clear in the EO applications, describe the following for each: (1) CARB EO number; (2) Product part number; (3) Product name; (4) Tune version; (5) Compatible vehicle make/model/years; (6) All tune options available for compatible vehicles (e.g., 91 octane, 93 octane, aftermarket air intake, idle speed, aftermarket FMIC, global spark); (7) Vehicle make/model/year tested; and (8) Tune options tested (e.g., 91 octane, 93 octane, aftermarket air intake, idle speed, aftermarket FMIC, global spark).
8. The Derive October 14, 2020 Response at page 33 states the number of authorized custom tuning dealers that have access to Derive's cloud infrastructure. EPA and Derive have had extensive discussions regarding the large number of persons with access to Derive Advantage software's Parameters of Concern (POC) and Limited Access Parameters (LAP). For each Derive authorized dealer, provide:
 - a. business name and full name of owner;
 - b. address of business, including all email addresses provided by the business;
 - c. contact information provided for this dealer available on the Derive website;
 - d. whether this dealer is identified on the Derive website as providing custom tuning (Y/N);
 - e. The Derive Cloud User ID(s);
 - f. Whether the business has access to Derive POC (Y/N);
 - g. Whether the business has access to Derive LAP (Y/N);
 - h. For those with access to the LAP, identify the purpose(s) provided for the need to access the LAP; and
 - i. Describe all efforts, including but not limited to dates of such efforts, taken by Derive to confirm whether the business's stated reason for requiring access for Legitimate Uses as required by Paragraph 30 of the CD.
9. On page 44 of the Derive October 14, 2020 Response, Derive states that a dongle registered to a different entity was used in conjunction with the cloud credentials (username and password) for Rudy's Diesel in January 2018 and that the cloud credentials (username and password) for TruckWurx were used in May 2019 by a dongle registered to a different entity.
 - a. For the entity that had the registered dongle used in conjunction with the cloud credentials for Rudy's Diesel, provide:
 - i. The business/company name;
 - ii. each individual associated with that business that has Derive cloud credential;
 - iii. all email addresses and other contact information;
 - iv. date when access to and activity on this entity's cloud account ceased;
 - v. file names of the tunes uploaded using this combination of registered dongle and cloud credentials;
 - vi. dates that each of these tunes that were uploaded to the Derive cloud were available to be downloaded and the number of downloads.

- b. For the entity that had the registered dongle used in conjunction with TruckWurx cloud credentials, provide:
 - i. The business/company name;
 - ii. each individual associated with that business that has Derive cloud credential;
 - iii. all email addresses and other contact information;
 - iv. date when access to and activity on this entity's cloud account ceased;
 - v. file names of the tunes uploaded using this combination of registered dongle and cloud credentials;
 - vi. the dates that each of these tunes that were uploaded to the Derive cloud were available to be downloaded and the number of downloads
- 10. On page 42 of the Derive October 14, 2020 Response, Derive states "Any dealer found to be non-compliant with these programs and policies is terminated as a dealer, prohibited from purchasing products from Derive, and their access to Derive's custom tuning software and cloud are terminated." When Derive terminates a dealer and deactivates access to the Derive Cloud, what happens to the tunes uploaded by that dealer? Does Derive immediately remove the ability of customers to download the calibrations?
- 11. For the information available on the Derive Cloud, for the time period from January 1, 2019 to the date of this information request, provide the following metadata: the User Id, Updated User ID, associated email address, file name, ECM SPF filename, file storage location, file size, serial number, dongle market, burns left, mime type, Advantage Version, notes, date updated, and number of downloads by customers in the United States.